United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:
Darrin B. Felsner, Case No. 02-71116-R
Debtor. Chapter 7
_____/

Shelia Solomon,
Plaintiff,

v. Adv. No. 04-5142

Michelle Middleton and Robert Fellmy,
Defendants.
_____/

Opinion Regarding Cross Motions for Summary Judgment

Shelia Solomon, the trustee in this chapter 7 case, filed a complaint against the defendants, Michelle Middleton and Robert Fellmy, seeking to avoid a transfer of property under 11 U.S.C. § 544(b). The parties have filed cross-motions for summary judgment in lieu of trial.

I.

In 2001, Darrin Felsner and Middleton were an unmarried couple residing in Michigan with the desire to relocate to Florida. Middleton owned property at 153 Dickerson, Mount Clemens, Michigan. In April 2001, Middleton sold her Mount Clemens residence for $175,000.00 and received $137,221.40 in net proceeds.

Middleton attempted to purchase a home at 1171 Prescott Boulevard, Deltona, Florida, for $177,500.00, with approximately 50% down payment, to be paid from the proceeds of her Michigan home. However, even with the down payment, Middleton did not qualify for a mortgage.

Middleton attempted to get approval with Felsner as a co-signor, but the joint application was rejected.

The real estate agent suggested that Felsner be named alone on the purchase agreement as the buyer, that Middleton gift the down payment to Felsner and that Felsner then quit claim the deed back to Middleton after closing. Felsner applied for a mortgage for $88,000.00 and was approved.

On July 11, 2001, Middleton signed a "gift letter" stating that she was giving Felsner $90,000.00 from the sale of her Michigan home to be used toward the purchase of the Deltona home. The letter stated that repayment of the gift was not required. (See Gift Letter attached to Affidavit of Marc A. Goldman, docket # 30.) On July 19, 2001, Felsner signed the mortgage on the property in the amount of $88,000.00. The HUD Settlement Statement indicates the sales price of $177,500.00 with a mortgage of $88,000.00 and a gift fund of $90,589.59. (See Settlement Statement attached to Affidavit of Marc A. Goldman.) On the same day, Felsner signed a quit claim deed conveying the property to Middleton. The deed states consideration of $90,589.59. (See Quit Claim Deed attached to Affidavit of Marc A. Goldman.)

Middleton and Felsner later ended their relationship. Middleton was unable to afford the mortgage payments on her own. To avoid foreclosure, Middleton transferred the property to her father, Robert Fellmy, who obtained a mortgage on the property. As a result, Fellmy was named as a codefendant in this adversary proceeding. Felsner was ultimately released from any obligation on the mortgage

Felsner filed for chapter 7 relief on December 30, 2002. Sheila Solomon was appointed trustee. On December 14, 2004, Solomon filed this complaint under § 544(b) to avoid the transfer of the property from Felsner to Middleton and Fellmy.

II.

The trustee argues that Middleton gave no consideration in exchange for Felsner's transfer of the property to her and that Felsner was then insolvent. Therefore, the trustee contends, Felsner fraudulently transferred the property to Middleton and the transfer should be avoided.

Middleton and Fellmy argue that the money used to purchase the property did not belong to Felsner and that the transfer of the ownership of the home did not impair Felsner's financial condition in any way. Because the money to purchase the house originally came from Middleton, she asserts that there was no consideration owed to Felsner upon his transfer of the property. The plaintiffs argue that the trustee is seeking a windfall by relying on one isolated event in the transaction. They assert that the transaction must be considered as a whole.

III.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact regarding an essential element of the non-moving party's case. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478 (6th Cir. 1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986)). After the moving party has met its burden, "the burden shifts to the non-moving party to set forth specific facts showing a triable issue." *Janda v. Riley-Meggs Indus., Inc*., 764 F. Supp. 1223, 1227 (E.D. Mich. 1991). The facts and inferences must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*

Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986). Summary judgment is properly granted where the issues in a case involve solely the application of legal principles to undisputed facts. *See Choate v. Landis Tool Co.*, 486 F. Supp. 774, 775 (E.D. Mich. 1980).

IV.

The trustee moves to avoid the transfer under Florida law because Felsner and Middleton resided in Florida at the time of the transfer and the real property is located in Florida. The Florida Fraudulent Transfer Act provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> 1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> 2. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

F.S.A. § 726.105.

The trustee relies on the gift letter in support of her assertion that Felsner did not receive any consideration for the transfer of the property.

For a gift to be valid, (1) the donor must possess the intent to transfer title gratuitously to the

donee, (2) there must be actual or constructive delivery of the subject to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift. *Davidson v. Bugbee*, 575 N.W.2d 574, 576 (Mich. App. 1997). Intent is determined by examining the facts and circumstances in evidence. *Osius v. Dingell*, 134 N.W.2d 657 (Mich. 1965).

The trustee relies on Middleton's gift letter to establish her intent to make a gift to Felsner. Ordinarily such a contemporaneous statement of a party's intent in relation to a transfer is entitled substantial weight. It is not, however, conclusive on the issue because a party's intent must be determined from all of the circumstances.

The Court concludes that the circumstances of this case establish that Middleton did not intend for her transfer of $90,589.59 to Felsner to be a gratuitous transfer. It is clear enough that Middleton only signed the gift letter to facilitate the purchase transaction and that she and Felsner intended a two part transaction. Middleton gave Felsner the money for the down payment with the intent and understanding that after Felsner obtained title, he would then quit claim the property to her. The motivation for this contrivance is also clear enough - to avoid the consequences of Middleton's bad credit and her inability to obtain a mortgage. The Court therefore concludes that Felsner did receive consideration for his transfer of the property to Middleton and that the transfer was not a fraudulent transfer avoidable by the trustee.

Accordingly, the trustee's motion for summary judgment is denied and the defendants' motion for summary judgment is granted.

NOT FOR PUBLICATION

Entered: August 22, 2006

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge